

Definitions

1. "The Company" means DF Clark Bionomique Ltd or any relevant associated company with whom the contract is made as specified in the formal written quotation. "Client" means the person, firm, company, organisation, corporation or public authority whose order for services is accepted by the Company. "Services" means services rendered for the Client under the contract of which these conditions form part.

Terms of acceptance of orders

2. Contracts are made and orders accepted only upon and subject to these terms and conditions. All other conditions are hereby excluded unless expressly accepted in writing by the Company. Each of these terms and conditions constitutes an entirely separate and independent provision so that if any of them are held to be invalid for any reason this shall not affect the remaining provisions which shall continue in full force and effect.

3. In entering into a contract with the Company the Client acknowledges that the contract has not been induced by any representations orally or in writing made by the Company, its servants or agents.

[4. No quotation estimate or tender given or made by the Company shall form an offer capable of acceptance by the Client. A binding contract shall only be created upon the acceptance in writing by the Company of the Client's copy of the Company's quotation, duly signed by the Client. The Company may, in its absolute discretion, accept or reject any order placed by the Client.]

5. Any typographical clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

Cancellation

6. Contracts may only be cancelled by the Client with the written consent of the Company, which, if given will be subject to the Client indemnifying the Company on demand for all costs and losses incurred as a result of such cancellation.

Client's Site

7. The Client must inform the Company prior to any site visit, by the Company's surveyors, of any hazards of which the Client is aware at the site. Otherwise the Company shall be entitled to assume that there are no undue risks to health and safety on the Client's site.

8. The Client shall ensure that the Company's surveyors will have full and uninterrupted access to all areas during their survey with any arrangements to access third party property being completed by the Client, prior to the Company's visit. Any areas that are deemed inaccessible or access is denied or which present a risk to health and safety will be excluded from the survey and annotated in the Company's report/designs accordingly.

Scope of Work

9. Unless expressly agreed between the Company and the Client, the scope of Services undertaken by the Company shall be limited to the agreed Schedule of Works, there being no implied ongoing warranty or provision of support services beyond the immediate work being undertaken.

Staff

10. The Client authorises any suitably qualified consultant of the Company to conduct the Services. Where the services of a specific consultant have been agreed, no substitution will be made without the prior agreement of the Client.

11. The Company warrants and represents that any consultant assigned to undertake the Services is properly trained and experienced to undertake the Services, and will do so in a professional manner with due care and skill.

12. The Company maintains a policy of continuous staff development. The Company reserves the right for trainee staff to accompany its consultants, as long as this in no way impacts upon the Services.

13. In undertaking the Services, the Company agrees to comply with all site, health and safety, and other reasonable requirements of the Client and will undertake the Services in compliance with all applicable laws. The Client undertakes to provide a safe working environment for the Company's staff.

Marketing

14. For marketing purposes, the Company maintains a list of past and present clients which it publishes on its website and in selected sales literature. Unless stated otherwise in writing, the Client grants the Company the right to use its name in this way.

15. If any client has any reasonable complaint against the Company, they may request in writing the removal of their name from the Client list. Upon receipt of such a request, the Company undertakes to remove the Client's name from its web site within seven days, and to cease the use of the Client's name on all future literature, until such time as the complaint has been dealt with to the satisfaction of the Client.

Intellectual Property

16. As between the Company and the Client, all copyright and other intellectual property rights and all other rights in all reports and/or designs prepared for the Client by the Company shall be owned by the Company. The Company licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the report/designs for the purpose for which it was prepared. If the Company terminates this Contract due to breach by the Client this licence will automatically terminate.

Data protection

17. The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data may be processed by and on behalf of the Company in connection with the Services.

Prices and payment

18. Any quotation by the Company will lapse if not accepted in writing within 30 days.

19. Unless expressly stated otherwise all prices quoted are exclusive of VAT. Any applicable value added tax (VAT) shall be added to the price and shall be payable by the Client. While the Company will endeavour to ensure that VAT is taken into account in any quotation or invoice, where for any reason VAT is not charged and is subsequently found to be payable, the amount of VAT will be paid by the Client on receipt of a VAT invoice.

20. Payment for the Services shall be made within 30 days of date of invoice. In default the Company shall be entitled to suspend the Services until payment is made in full.

21. The Company will be pleased to supply additional copies of any report prepared on behalf of the Client at a cost of £10 plus VAT [and postage].

22. The Company reserves the right, by giving notice to the Client at any time before performance of the Services, to increase the price of the Services to reflect any increase in the cost to the Company which is due to any change in the specifications for the Services which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to provide adequate information or instructions.

Late Payment

23. If payment of any of the Company's invoices is overdue the Company may:

- Charge and recover interest from the client at the rate of 4% a year above [Barclays Bank] Plc base rate from time to time from the due date until payment;
- Suspend its performance of the contracts to which the invoice relates and/or any other contract then subsisting between the Client and the Company.

24. In the event of legal action being taken by the Company against the Client for breach of payment obligations, the Client shall be responsible for all costs and disbursements on a full indemnity basis.

Performance

25. Any dates quoted for the provision of a report or design runs from the date of receipt by the Company of a written order to proceed and all necessary information and materials.

26. While every effort will be made to meet the dates which are given in good faith, no liability can be accepted in the event of delay.

Force Majeure

27. The Company shall not be liable for non-performance in whole or in part of its obligations if such non-performance is due to acts of God, war, insurrection, government regulations, embargoes, strikes, labour disputes, illness, fire, flood, tempest, the Royal Mail or other postal service or any other cause beyond the control of the Company. During the continuance of such contingency the Client may, by written notice to the Company, elect to terminate the contract and pay for work done and materials used, but subject thereto will otherwise accept performance when possible.

Liability and Claims

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THESE PROVISIONS

28. Except for death or personal injury due to negligence of the Company or its employees in no event shall any breach of contract or tort (including negligence) or failure of any kind on the part of the Company or its employees give rise to any liability for loss of revenue or any consequential loss or damage arising from any cause whatsoever even if the Company has been advised of the possibility of such losses.

[29. The Company shall not be liable for oral advice given by staff. Reference must always be made to the Company's written report. In no circumstances can the Company be liable where the Client has not heeded the Company's written advice.] TBD

30. All claims must be made in writing within 28 days of the occurrence of the event giving rise to a claim. The Company shall always be afforded a reasonable opportunity to correct a default before being in breach of its obligations. The Company shall not be liable in respect of any claim unless these requirements have been complied with except in any particular case where the Client proves that it was not possible to comply and the claim made as soon as reasonably possible thereafter.

31. Subject to the above the Company's entire liability howsoever arising shall be limited to damages which shall not in the case of public liability exceed £[1 million] and in respect of all other matters shall not exceed the price of the contract out of which the claim has arisen in respect of any one claim. A number of defaults which together result in or contribute to the same loss or damage shall be treated as one claim.

32. Except as expressly stated herein, all conditions warranties representations and undertakings, express or implied, statutory or otherwise are excluded.

33. The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these conditions, subject to the Company confirming such costs, charges and losses to the Client in writing.

Insolvency of the Client

34. This Condition applies if:

- the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- the Client ceases or threatens to cease, to carry on business; or
- The Company reasonably apprehends that any of the events mentioned above is about to incur in relation to the Client and notifies the Client accordingly.

35. If condition 34 applies then, without prejudice to any other right or remedy available to The Company, it shall be entitled to cancel all Contracts or suspend any further deliveries under any Contract without any liability to the Client, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

Waiver of Remedies

36. No forbearance, delay or indulgence by either party in enforcing the provisions of these terms and conditions shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach.

Law

37. These terms conditions and the contract to which they relate shall in all respects be construed in accordance with English Law and the Client hereby submits to the exclusive jurisdiction of the English courts.

Notices

38. All notices which are required to be given by the Company or the Client shall be in writing and shall be sent in the case of a company to its registered office and in all other cases to the last known address of the recipient, or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notices may be delivered by hand, by first-class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first-class post 48 hours after posting and if by facsimile when despatched.